

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v. -

JOSEPH PERCOCO, a/k/a "Herb,"  
PETER GALBRAITH KELLY, JR.,  
STEVEN AIELLO, and  
JOSEPH GERARDI,

Defendants.

**No. S2 16 Cr. 776 (VEC)**

**DEFENDANTS' PROPOSED JUROR QUESTIONNAIRE**

JUROR NUMBER \_\_\_\_\_

PLEASE PRINT ALL ANSWERS LEGIBLY IN BLUE OR BLACK INK.

**Introduction**

The purpose of this questionnaire is to provide information to the Court and to the attorneys in this case—both the prosecutors and the defense attorneys—so that they can determine whether you can serve as a fair and impartial juror in this case. You must give true, candid, and complete answers to every question. This is a criminal case, entitled United States of America versus Joseph Percoco, Peter Galbraith Kelly, Jr., Steven Aiello, and Joseph Gerardi. Briefly summarized, the Government has charged Joseph Percoco, the former Executive Deputy Secretary to the Governor of New York, Peter Galbraith Kelly, Jr., Steven Aiello, and Joseph Gerardi with public corruption offenses involving the New York State Governor's Office, including allegations of bribery, fraud and extortion. Defendants Steven Aiello and Joseph

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Gerardi are also charged with making false statements to federal officers. The defendants have pled not guilty and each one is presumed innocent unless and until proven guilty.

Do not discuss this questionnaire or your answers with anyone, including Court personnel and your fellow potential jurors. Please do not leave any questions unanswered. If you do not understand a question, write that on the questionnaire and we will discuss it with you later. Please write your juror number on the top of each page of the questionnaire. **Do not write your name on the document.** There is an extra page at the back of the questionnaire if you need additional space for your answers. **Do not write on the back of any page of the questionnaire.**

There are no “right” or “wrong” answers; there are only truthful answers. You are sworn to give truthful answers, so you must provide full and accurate information in response to each question.

NOTE: Do not do any research regarding this case. That means you should not “look up” the case or any of the names mentioned in the questionnaire on the Internet or in any other manner. Do not discuss this case, this questionnaire or your answers to the questions with anyone—not your fellow jurors, your family, your employer, or your friends.

JUROR NUMBER \_\_\_\_\_

**Questions**

1. Do you or does any member of your family or a close friend personally know or have / have had any dealings with any of the following individuals?

a. The defendants: Joseph Percoco, Peter Galbraith Kelly, Jr., Steven Aiello, or Joseph Gerardi?

Yes       No

If yes, whom do you know?

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b. The Acting U.S. Attorney for the Southern District of New York, Joon H. Kim or anyone else who works for or used to work for the U.S. Attorney's Office?

Yes       No

If yes, whom do you know?

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c. Any of the Assistant United States Attorneys who are prosecuting this case?

Janis Echenberg       Yes       No

David Zhou       Yes       No

Robert Boone       Yes       No

Matthew Podolsky       Yes       No

If yes, whom do you know?

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d. Any of the defense attorneys or law firms who are representing the defendants:

Barry A. Bohrer of Schulte Roth & Zabel LLP       Yes       No

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Michael L. Yaeger of Schulte Roth & Zabel LLP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Andrew D. Gladstein of Schulte Roth & Zabel LLP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Abigail F. Coster of Schulte Roth & Zabel LLP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Daniel M. Gitner of Lankler Siffert & Wohl LLP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Jun Xiang of Lankler Siffert & Wohl LLP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Samantha J. Reitz of Lankler Siffert & Wohl LLP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Rachel S. Berkowitz of Lankler Siffert & Wohl LLP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Stephen R. Coffey of O'Connell & Aronowitz	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Scott W. Iseman of O'Connell & Aronowitz	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Milton L. Williams of Walden Macht & Haran LLP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Avni P. Patel of Walden Macht & Haran LLP	<input type="checkbox"/> Yes	<input type="checkbox"/> No

If yes, whom do you know?

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e. The United States District Court Judge who is presiding over this case, Valerie Caproni, or any of her staff?

Yes       No

If yes, whom do you know?

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If you answered "yes" to any of the above questions, please explain how you know the individual(s):

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JUROR NUMBER \_\_\_\_\_

If you answered "yes" to any of the above questions, please state whether your relationship with that person might affect your ability to be fair and impartial in this case:

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2. Before today, had you read, seen, or heard anything about criminal charges being brought against Joseph Percoco, Peter Galbraith Kelly, Jr., Steven Aiello, and Joseph Gerardi?

Yes       No

If yes, what do you recall?

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If yes, from whom did you hear about the case (e.g., a friend, the newspaper, a website)?

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3. Do you have any personal knowledge of the facts underlying the indictment as they are described above?

If yes, please explain:

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JUROR NUMBER \_\_\_\_\_

4. Based on anything that you might have read, seen or heard about this case, have you formed any opinion about any of the defendants that might make it difficult for you to be a fair and impartial juror in this case?

Yes       No

Not applicable; I have heard nothing about this case.

If yes, please explain:

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5. Based on anything you have read, seen, or heard about this case, would you be able to follow the Court's instruction to put that information out of your mind and decide this case based only on the evidence presented at trial?

Yes       No

Not applicable; I have heard nothing about this case.

If no, please explain:

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6. [Have you followed the news about the trials of political officials in recent years?]<sup>1</sup>

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<sup>1</sup> The defense would like to include Question 6. The Government objects and offers no alternative formulation. The defense believes that, given the amount of media attention to the Silver and Skelos cases, it is likely that some prospective jurors have both heard and formed opinions about the fact that these convictions were overturned. Given how close in time these

JUROR NUMBER \_\_\_\_\_

Yes       No

If yes, do you have any feelings about those trials or their outcomes?

Yes       No

If yes, please explain:

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7. Is there anything about the nature of this case, including the fact that it involves accusations of bribery and corruption by someone associated with the Governor's Office, that would make it difficult for you to be a fair and impartial juror?

Yes       No

If yes, please explain:

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8. [Do you have any opinions about politicians, government officials, or anyone else who works in government that may affect your ability to be a fair and impartial juror in this case?]<sup>2</sup>

cases were to each other, some may have formed generalized opinions about how cases involving political officials are handled in the courts. We hope to identify these opinions and those who hold them. The questionnaire allows prospective jurors to express their opinions without tainting other jurors. Moreover, this question is worded broadly enough that they do not prime those who are unfamiliar with Skelos, Silver, and McDonnell, nor do they advance defense positions.

<sup>2</sup> The defense would like to include Question 8. The Government objects and offers no alternative formulation. The defense believes that this question is neutral and consistent with the following question from the Silver questionnaire: "Is there anything about the nature of this case, including the identity of the defendant or the fact that it involves accusations of bribery and

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Yes       No

If yes, please explain:

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9. [Have you or has anyone close to you ever made campaign contributions to political candidates?]<sup>3</sup>

Yes       No

10. [Do you have any feelings about individuals and companies that make relatively large campaign contributions to political candidates?]

Yes       No

If yes, please explain:

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kickbacks by an elected official, that would make it difficult for you to be a fair and impartial juror.” Our proposed question and the question preceding it are designed to determine whether any juror would have trouble being fair or impartial because of the nature of the case and the participants.

<sup>3</sup> The defense would like to include Questions 9 and 10. The Government objects and offers no alternative formulation. The defense wants to ensure that jurors are not prejudiced by pre-existing negative beliefs about behaviors that are legal. Alternatively, the defense requests that a formulation of this question be included in the Court’s oral voir dire (e.g., “I will instruct you that, under the law, campaign contributions are a form of speech protected under the First Amendment, and that is lawful for a company to give campaign contributions to candidates who it believes will be supportive of policies the company favors. Do you have any hesitation about being able to follow that instruction?”).

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11. Do you have any opinion of the U.S. Attorney's Office for the Southern District of New York or the Acting U.S. Attorney Joon H. Kim that might make it difficult for you to be a fair and impartial juror in this case?

Yes       No

If yes, please explain:

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12. Do you have any opinions about criminal defense attorneys generally that might make it difficult for you to be a fair and impartial juror in this case?

Yes       No

If yes, please explain:

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13. Do you have any opinion about the criminal justice system generally or the federal criminal justice system that might make it difficult for you to be a fair and impartial juror in this case?

Yes       No

If yes, please explain:

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JUROR NUMBER \_\_\_\_\_

14. Have you, or has any member of your family or a close friend, ever worked for New York Governor Andrew Cuomo or for a New York State agency?

Yes       No

If yes, please identify who it was and what position or agency:

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15. Do you or does any member of your family or a close friend have any experience lobbying the government (local, state, or federal)?

Yes       No

If yes, was there anything about your or their experience that might make it difficult for you to be a fair and impartial juror in a case that involves lobbying?

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16. Do you or does anyone close to you work in the energy industry, [or in any field related to the environment and environmental resources?]<sup>4</sup>

Yes       No

If yes, please explain:

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<sup>4</sup> The defense would like to include Question 16. The Government agrees to the phrase “[d]o you or does anyone close to you work in the energy industry,” but objects to the phrase “or in any field related to the environment and environmental resources.” The defense believes that this phrase is important and relevant as the Reciprocity Agreement implicates environmental issues and regulators. Moreover, there have been high-profile environmental protests of a CPV facility at issue in this case, including during a pre-trial conference. We need to identify whether any juror would harbor a bias for environmental reasons.

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17. Do you or does anyone close to you work in the construction or real estate industry?

Yes       No

If yes, please explain:

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18. Have you or any member of your family or a close friend ever had any personal interaction with either of the following companies?

Competitive Power Ventures (CPV)   
COR

If yes, please explain:

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19. Do you or does any member of your family or a close friend know or have / have had dealings with:

[List to be provided by all parties prior to trial]       Yes       No

If yes, please indicate whom you know and how you know them:

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20. Do you have any religious or ethical beliefs that would prevent you from passing judgment on another person?

Yes       No

If yes, please explain:

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21. Do you have any difficulty with your eyesight or hearing, or have any medical condition that would make it difficult for you to serve on a jury?

Yes       No

If yes, please explain:

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22. Do you have any difficulty reading or understanding the English language?

Yes       No

23. The trial of this case may last up to [] weeks. The jury will sit Mondays through Thursdays from approximately 9:30 a.m. to 5:30 p.m. The Court will not sit on Martin Luther King Day, which is Monday, January 15. All jury service involves some degree of hardship. Would service as a juror in this case be a serious hardship for you?

Yes       No

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If yes, please explain why serving on the jury for this case would cause you a serious hardship:

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**Please note:** In the event you are excused from service on this jury, you will not be excused from jury service in general. You will instead be required to report to the Court's Jury Clerk for placement on another panel for another case.

I swear (or affirm) that all of the answers provided above are truthful.

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Juror Number

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Extra space for your answers to any of the questions. Please write the question number: